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Federal Communications Commission
Office of the Secretary

December 5, 2016

Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Mr. Wheeler,

As the FCC is considering changes to its process for importing regulated products, the Express Association of America (EAA) thought it would be useful to get together to discuss some key distinctions regarding the role of importers and importers of record. EAA members are DHL, Federal Express, and UPS, the three largest express delivery service providers in the world, providing fast and reliable service to the U.S. and more than 220 other countries and territories. These EAA member companies have estimated annual revenues in excess of \$200 billion, employ more than 1.1 million people, utilize more than 1700 aircraft, and deliver more than 30 million packages each day.

The FCC is proposing that "no radio frequency device may be imported into the Customs territory of the United States unless the importer or ultimate consignee, *or their designated customs broker*, determines that the device meets one of the conditions of entry set out in this section." [Emphasis added.]

EAA agrees with the National Customs Brokers and Forwarders Association of America (NCBFAA), that it is inappropriate for the customs broker to be one of the parties legally responsible for determining that a device meets FCC requirements. In their role of facilitating the paperwork for the customs entry, brokers do not have the necessary knowledge of the product's design or manufacture to render such a judgment. We therefore recommend that the italicized language in the above section of the regulation be deleted.

Furthermore, to achieve the FCC's apparent goal of ensuring imported products conform with FCC performance standards, the agency should be clear about what party should be considered the "importer". The generally accepted definition of "importer" used by the U.S. Government is the "U.S. owner or consignee," defined as the person in the United States who, at the time of import, either owns the product, has purchased the product, or has agreed in writing to purchase

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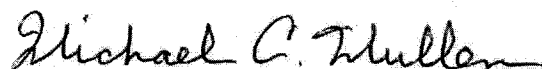
the product. If there is no U.S. owner or consignee at the time of import, the responsible party is the U.S. agent or representative of the foreign owner. Using this definition of importer would ensure the FCC is aligned with the general provision of the Trade Act of 2002, that the party who is responsible for providing data on imports is the entity in the best position to actually have the required knowledge or information regarding the product.

As defined above, the importer is an entity distinct from the "importer of record (IOR)". A customs broker may act as the IOR as a convenience to facilitate imports. The actual importer, the ultimate consignee or the "sold to" party, is responsible for all other aspects of the shipment. Only the importer who is the owner of the goods has the knowledge of the product and the expertise required to be responsible for providing the certification of compliance with FCC performance standards. Requiring such certification from the importer of record places an unreasonable burden on parties acting as an IOR under nominal consignee provisions. Furthermore, importers do not want a broker representing them on product conformity issues, an area where their reputation is at stake.

We recommend the FCC focus on developing a process to obtain information on product conformity with FCC performance standards that moves the submission of the required certification away from the border clearance process. Such information could be obtained after the release of the product by following up with the importer, or could be made a condition of importing that requires the certification from the manufacturer in advance. Trying to obtain such technical information at the time of import will result in numerous and burdensome delays, that will impose large and unreasonable costs on both industry and Government.

We would very much like to have a meeting with you to explore this issue further and answer any questions you might have. The week of January 9th would be most convenient for us to get together. Please let me know a good date/time for you. You can reach me at 703 759-0369 or at michael.mullen@expressamerica.com. I am looking forward to hearing from you.

Sincerely,

A handwritten signature in dark ink, reading "Michael C. Mullen". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael C. Mullen
Executive Director